0013 8682 91 (June 1, 2016) – Claimant, who resigned with a voluntary retirement package, did not have a reasonable belief of imminent layoff. Empty offices, fewer manufacturing orders, a news article about the company reducing its worldwide workforce by 10%, and training someone to perform her job during an earlier medical leave, could give rise to a concern, but the claimant never asked whether her job was in jeopardy.

Board of Review
19 Staniford St., 4th Floor
Boston, MA 02114
Phone: 617-626-6400
Fax: 617-727-5874

Paul T. Fitzgerald, Esq.
Chairman
Judith M. Neumann, Esq.
Member
Charlene A. Stawicki, Esq.
Member

Issue ID: 0013 8682 91
Claimant ID: 10125237

BOARD OF REVIEW DECISION

Introduction and Procedural History of this Appeal

The claimant appeals a decision by a review examiner of the Department of Unemployment Assistance (DUA), to deny unemployment benefits. Benefits were denied on the ground that the claimant voluntarily left her employment without good cause attributable to the employer, pursuant to G.L. c. 151A, § 25(e)(1).

The claimant had filed a claim for unemployment benefits, which was denied in a determination issued by the agency on August 14, 2014. The claimant appealed to the DUA Hearings Department. Following a hearing on the merits, the review examiner affirmed the agency's initial determination in a decision rendered on April 7, 2015. The claimant sought review by the Board, which denied the appeal, and the claimant appealed to the District Court, pursuant to G.L. c. 151A, § 42.

On January 14, 2016, the District Court ordered the Board to obtain further evidence regarding the claimant's state of mind. Consistent with this order, we remanded the case to the review examiner to take additional evidence and make credibility assessments concerning the claimant's belief that she would soon be laid off if she did not accept a Voluntary Separation Package ("VSP"). Only the claimant attended the remand hearing. Thereafter, the review examiner issued her consolidated findings of fact.

The issue before the Board is whether the review examiner's conclusion that the claimant was disqualified, under G.L. c. 151A, § 25(e)(1), because the claimant did not reasonably believe that she would soon be laid off, is supported by substantial and credible evidence and is free from error of law.

After reviewing the entire record, including the recorded testimony and evidence from the original and remand hearings, the review examiner's decision, the claimant's appeal, the District Court's Order, and the consolidated findings of fact, we affirm the review examiner's decision.

Findings of Fact

The review examiner's consolidated findings of fact and credibility assessments, which were issued following the District Court remand, are set forth below in their entirety:

1. The claimant worked as a Production Planner, for the employer, a Manufacturing Company, from July 20, 1980 until June 28, 2013, when she was separated.

2. The claimant worked at the employer's [Town A] facility.

3. The claimant worked full-time hours for the employer.

4. In January 2013, the employer offered employees who were fifty-five years of age and older and had also worked for the employer for at least ten years a Voluntary Separation Package. The package would give an employee three weeks of pay for every year worked for the employer.

5. The employer informed its employees that this was a very good package and not likely to be offered again in the near future.

6. Because of the number of years worked by the claimant, she would be eligible for ninety-nine weeks of full pay if she elected to accept the package.

7. The claimant never asked her employer if her job was in jeopardy if she did not take the package.

8. No one ever told the claimant that her job was in jeopardy if she did not take the package.

9. The claimant attended a group meeting about the voluntary separation package.

10. The meeting was led by a member of the human resources department.

11. The claimant is unable to recall when the meeting took place.

12. The claimant is unable to recall what was said at the meeting.

13. In January 2013, the claimant read an article published in the Republican on January 26, 2013. The article states that the global employer planned on reducing its overall workforce by ten percent by 2015. The article also states that no information was known about how this reduction would affect the [Town A] facility.

14. The claimant did not think that she would be laid off if she did not take the package.

15. The claimant decided to take the package because of the financial incentive, which she did not think would be offered again by the employer.

16. The claimant informed her employer that she was going to accept the package on January 31, 2013.

17. The claimant officially accepted the package in June 2013. The claimant did have to sign a release of claims to get the money from the employer.

18. The claimant filed for unemployment benefits.

19. The claimant was approved by DUA on her severance issues because she had signed a release of claims.

20. The issue dealing with the claimant's actual separation from the employer was never adjudicated.

21. The claimant received payment for this entire claim.

22. In June 2014, the claimant mistakenly re-opened her claim and the separation issue came to light for DUA as a result.

23. On August 24, 2014, the claimant received a Notice of Disqualification, indicating that she was not entitled to receive unemployment benefits beginning June 23, 2013 under Section 25(e)(1) of the Law because the claimant retired from her job.

24. The claimant appealed the disqualification.

25. The claimant did retire as of September 2014.

CREDIBILITY ASSESSMENT

The claimant presented conflicting testimony between the original hearing and the remand hearing. During the first hearing, the claimant stated without hesitation, that she never believed that she was going to be laid off if she did not accept the voluntary separation package offered by her employer. The claimant testified that she accepted the package because she thought it was a monetarily wise thing to do and that such a financially generous package would not be offered to employees again anytime in the near future.

At the remand hearing, the claimant testified that she believed that she would be laid off based on two newspaper articles, both which were submitted to DUA to put into the record. When questioned about the newspaper articles, the claimant admitted that she had only read one of the articles at the time she decided to accept the voluntary separation package. The article which the

> claimant had read at the time she decided to accept the package was very vague and gave no specific information about how the reduction of workforce may or may not impact the claimant and therefore it would not be reasonable for one to conclude that his/her particular position within the company was in imminent danger.
>
> Additionally, at the remand hearing, the claimant testified that she believed she would be laid off based on a meeting put on by her employer which she had attended. Even though the claimant testified that she left the meeting thinking she was going to lose her job, the claimant was unable to provide any details on when the meeting took place or what was said at the meeting. Without any concrete information pertaining to any of the details surrounding the meeting, it cannot be concluded that the claimant's belief that her job was in imminent danger, had she not taken the package, [was] based on her attendance at the instant meeting.
>
> At both the original hearing and the remand hearing, the claimant testified that she never actually asked her employer if her job was in jeopardy if she did not accept the package. The claimant also testified that she was never told by the employer that her job would be in jeopardy had she elected not to take the package. Again, the claimant's allegation that she may have accepted the package for fear of losing her job if she did not accept the package falls short of reasonable relating to her failure to get any evidence from the employer to support her assertion. The claimant failed to present any credible reason as to why she did not attempt to get this information from her employer.
>
> Given the record as a whole, it is concluded that the claimant's testimony at the remand hearing, that she thought she was going to be laid off if she had not taken the voluntary separation package, is not credible.

Ruling of the Board

In accordance with our statutory obligation, we review the decision made by the review examiner to determine: (1) whether the consolidated findings are supported by substantial and credible evidence; and (2) whether the review examiner's original conclusion is free from error of law. Upon such review, the Board adopts the review examiner's consolidated findings of fact and deems them to be supported by substantial and credible evidence. As discussed more fully below, we also agree that the claimant is not entitled to benefits.

Since the claimant voluntarily separated from employment, we analyze her eligibility pursuant to G.L. c. 151A, § 25(e)(1), which provides, in pertinent part, as follows:

> No waiting period shall be allowed and no benefits shall be paid to an individual under this chapter . . . (e) For the period of unemployment next ensuing . . . after the individual has left work (1) voluntarily unless the employee establishes by substantial and credible evidence that he had good cause for leaving attributable to the employing unit or its agent . . . .

The explicit language in G.L. c. 151A, § 25(e)(1), places the burden of persuasion on the claimant. Cantres v. Dir. of Division of Employment Security, 396 Mass. 226, 230 (1985).

An employee may be entitled to benefits if she can show that she accepted a VSP under a reasonable belief that she would soon be laid off, if she did not accept the employer's offer. White v. Dir. of Division of Employment Security, 382 Mass. 596, 597-598 (1981). The reasonableness of the claimant's belief is a question of law. *See* Ducharme v. Comm'r of Department of Employment and Training, 49 Mass. App. Ct. 206, 208–209 (2000). Alternatively, she may show that the employer "substantially hindered the ability of [the] employee to make a realistic assessment of the likelihood that [s]he would be involuntarily separated" if she did not accept the offer. State Street Bank & Trust Co. v. Deputy Dir. of Division of Employment and Training, 66 Mass. App. Ct. 1, 11 (2006). In this case, the claimant has not established either.

The review examiner's decision to disqualify the claimant was based upon the claimant's testimony at the original hearing that she did not believe she would likely be let go, if she did not accept the separation package. Pursuant to the District Court's order, the question of the claimant's state of mind was revisited at the remand hearing, where the claimant insisted that she did fear being laid off if she did not accept the VSP. In the consolidated findings of fact, the examiner resolved this conflicting testimony. Consolidated Findings ## 14 and 15 provide that the reason the claimant took the VSP was due to its financial incentive and not because the claimant thought she would be laid off. "The review examiner bears '[t]he responsibility for determining the credibility and weight of [conflicting oral] testimony, . . .'" Hawkins v. Dir. of Division of Employment Security, 392 Mass. 305, 307 (1984), *quoting* Trustees of Deerfield Academy v. Dir. of Division of Employment Security, 382 Mass. 26, 31–32 (1980). Unless such assessments are unreasonable in relation to the evidence presented, they will not be disturbed on appeal. *See* School Committee of Brockton v. Massachusetts Commission Against Discrimination, 423 Mass. 7, 15 (1996). We see no reason to disturb these findings.

The examiner's detailed credibility assessment explains that she reached these state of mind findings, in part, because the employer never informed the claimant that she would be laid off if she did not accept the package. *See* Consolidated Findings # 8. The only news article that the claimant had seen before she accepted the package was vague and did not indicate how the anticipated workforce reduction would specifically impact the claimant. Indeed, Remand Exhibit # 18, a January 26, 2013, article from The Republican, reports that the employer planned to reduce its worldwide workforce by 10% and that "no figure had been set for how much of the 10 percent reduction would come from the [Town A] site."[1] Additionally, the claimant never asked the employer if her job was in jeopardy. The factors cited by the claimant about watching people be let go "in dribs and drabs" over the prior year, empty offices, fewer manufacturing orders, and, perhaps, having trained someone to perform her job during an earlier medical leave, could give rise to a concern, but that concern should have led the claimant to further inquiry. The results of that inquiry may or may not have confirmed the claimant's concern about her own

[1] We have supplemented the findings of fact as necessary with the unchallenged evidence before the review examiner. *See* Bleich v. Maimonides School, 447 Mass. 38, 40 (2006); Allen of Michigan, Inc. v. Deputy Dir. of Department of Employment and Training, 64 Mass. App. Ct. 370, 371 (2005).

situation.[2] Under these circumstances, the failure to make further inquiry rendered any belief that her own job was at risk to be little more than conjecture. *See* Board of Review Decision 0014 7732 73 (Dec. 17, 2015).[3]

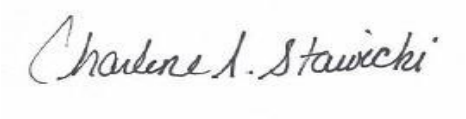
In sum, the record lacks objective evidence that the claimant was likely to be laid off, for purposes of White, *supra*, or that the employer prevented the claimant from obtaining the information that would allow her to determine whether she was objectively in danger of layoff, for purposes of State Street, *supra*.

We, therefore, conclude as a matter of law that the claimant voluntarily separated from employment without good cause attributable to the employer, within the meaning of G.L. c. 151A, § 25(e)(1).

The review examiner's decision is affirmed. The claimant is denied benefits for the period beginning June 23, 2013, and for subsequent weeks, until such time as she has had at least eight weeks of work and has earned an amount equivalent to or in excess of eight times her weekly benefit amount.

BOSTON, MASSACHUSETTS
DATE OF DECISION – June 1, 2016

Judith M. Neumann, Esq.
Member



Charlene A. Stawicki, Esq.
Member

Chairman Paul T. Fitzgerald, Esq. did not participate in this decision.

ANY FURTHER APPEAL WOULD BE TO A MASSACHUSETTS STATE DISTRICT COURT OR TO THE BOSTON MUNICIPAL COURT
(See Section 42, Chapter 151A, General Laws Enclosed)

To locate the nearest Massachusetts District Court, see:
www.mass.gov/courts/court-info/courthouses

The last day to appeal this decision to a Massachusetts District Court is thirty days from the mail date on the first page of this decision. If that thirtieth day falls on a Saturday, Sunday, or legal holiday, the last day to appeal this decision is the business day next following the thirtieth day.

[2] The claimant's testimony about seeing earlier layoffs, more empty offices, fewer manufacturing plant orders, and previously training a coworker was also part of the unchallenged evidence at the hearing.

[3] Board of Review Decision 0014 7732 73 is an unpublished decision, available upon request. For privacy reasons, identifying information is redacted.

Please be advised that fees for services rendered by an attorney or agent to a claimant in connection with an appeal to the Board of Review are not payable unless submitted to the Board of Review for approval, under G.L. c. 151A, § 37.

AB/rh